



**Legislative Bulletin.....June 3, 2003**

**Contents:**

- S. 222—Zuni Indian Tribe Water Rights Settlement Act of 2003
- S. 273—Grand Teton National Park Land Exchange Act
- H.R. 1082—Birch Bayh Federal Building and United States Courthouse Designation Act
- H.J.Res. 4—Proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States

---

---

**S. 222 — Zuni Indian Tribe Water Rights Settlement Act of 2003 (Sen. Kyl)**

**Order of Business:** The bill is scheduled for consideration on Tuesday, June 3<sup>rd</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** S. 222 ratifies the provisions of a settlement agreement entered into by the Zuni Indian Tribe, the State of Arizona, the Salt River Project, Tucson Electric Power Company, and others involved in a dispute over water rights for the Little Colorado River basin.

The bill authorizes \$19.25 million to the Zuni Indian Tribe Water Rights Fund, which is established in the Treasury and managed by the Secretary of the Interior. The \$19.25 million is to be allocated as follows:

- \$3.5 million for FY04 for the acquisition of at least 2,350 acre-feet per year of water rights and associated lands; and
- \$5.25 million per year in FY04-06 to restore, rehabilitate, and maintain the Zuni Heaven Reservation.

The tribe may only make withdrawals from the Fund after the Secretary has approved a tribal management plan that certifies the funds will be used for the purposes laid out in the bill. The tribe must also submit an annual report to the Secretary describing all expenditures from the Fund for that year.

Upon meeting the conditions of the settlement agreement and requirements in the bill, land specified in the bill would be taken into trust for the Zuni Tribe by the Secretary of the Interior. If these conditions are not met, the settlement agreement would be void.

S. 222 further releases the United States from any potential damage claims that might be asserted by the Tribe and relieves the federal government of the obligation to litigate the Tribe's water rights claims. The federal government would retain its ability to initiate

enforcement actions (as necessary) in the future to protect the environment and water quality in the area.

**Additional Background:** The dispute over water rights for the Little Colorado River basin has been in litigation since 1979. On June 7, 2002, the parties entered into a settlement agreement to resolve the dispute.

Further background from the Department of the Interior:

The Little Colorado River (LCR) Basin covers an area of approximately 17.2 million acres or 26,964 square miles in northeastern Arizona and northwestern New Mexico. The main stem of the Little Colorado River is entirely in Arizona. Therefore, this adjudication deals only with claims inside the borders of Arizona. Five different Indian tribes have reservations, or pending claims to reservation lands, within the Basin: the Navajo Nation, Hopi Tribe, Zuni Tribe, San Juan Southern Paiute Tribe and the White Mountain Apache Tribe.

The Settlement Agreement at issue here concerns only the Zuni Tribe's relatively small water right claims at the Zuni Heaven Reservation located in the southeastern section of the Basin, at the confluence of the Zuni and Little Colorado Rivers. Zuni Heaven is a unique reservation created fairly recently to accommodate the religious and cultural practices of the Zuni. The main Zuni reservation, in contrast, is located in New Mexico. The majority of the Zuni members reside on the main reservation.

According to Zuni religious beliefs, a lake formerly located on the Zuni Heaven Reservation is a window into heaven. That lake and the surrounding wetlands disappeared in recent history due to upstream diversions and groundwater pumping in the surrounding areas. The Settlement Agreement provides the Tribe with the water and land to restore the lake for use in future religious ceremonies.

The Zuni Heaven Reservation was established by Congress in 1984 through Public Law 98-498 and expanded in 1990 through Public Law 101-486 to further the religious and cultural needs of the Tribe. That legislation established the land base of the Reservation within the Tribe's aboriginal territory and facilitated the Tribe's regular pilgrimage from New Mexico to Arizona by authorizing the United States to obtain easements along the pilgrimage route.

Since 1979, water rights in the Little Colorado River basin have been the subject of an Arizona state general stream adjudication. The United States filed a water rights claim on behalf of the Zuni Tribe in the state proceeding for water rights to Zuni Heaven.

S. 222 passed the Senate by unanimous consent on March 13.

**Committee Action:** The bill was referred to the Committee on Resources on March 17 and while it was not considered, the Subcommittee on Water and Power marked-up H.R. 495 (legislation identical to S. 222) and reported the bill by voice vote on April 3.

**Administration Position:** The Administration supports S. 222.

**Cost to Taxpayers:** The Congressional Budget Office estimates that S. 222 will cost \$19 million over the 2004-2006 period.

**Does the Bill Create New Federal Programs or Rules?:** The bill ratifies a water settlement agreement and establishes a new Zuni Indian Tribe Water Rights Fund in the Treasury.

**Constitutional Authority:** A committee report citing constitutional authority is not available.

**Staff Contact:** Lisa Bos, [lisa.bos@mail.house.gov](mailto:lisa.bos@mail.house.gov), (202) 226-1630

---

---

## **S. 273 — Grand Teton National Park Land Exchange Act (Sen. Thomas)**

**Order of Business:** The bill is scheduled for consideration on Tuesday, June 3<sup>rd</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** S. 273 authorizes the Secretary of the Interior to acquire 1,406 acres of state land within the boundary of the Grand Teton National Park in Wyoming through donation, purchase, or exchange. The bill also provides for an appraisal process and authorizes “such sums as may be necessary” to carry out the purposes of the bill.

**Additional Background:** The State of Wyoming was given scattered parcels of land when granted statehood for the benefit of state schools. Some of these lands were within what has now become Grand Teton National Park. The size of the park is currently 310,000 acres. The federal government owns 50.6 percent of the land in Wyoming, according to the General Services Administration.

The Senate passed S. 273 by unanimous consent on April 3<sup>rd</sup>.

Both the House and Senate passed legislation similar to S. 273 in the 107<sup>th</sup> Congress (S. 1105). The House passed the bill by voice vote on September 24, 2002, with provisions in addition to those in the original Senate-passed text unrelated to the Grand Teton land exchange. The House and Senate did not resolve the differences between the bills before the 107<sup>th</sup> Congress adjourned.

**Committee Action:** The bill was referred to the House Committee on Resources on April 7, but was not considered.

**Administration Position:** The Administration supports the bill.

**Cost to Taxpayers:** The Congressional Budget Office estimates that S. 273 will cost \$1 million in FY04.

**Does the Bill Create New Federal Programs or Rules?:** The bill authorizes the acquisition of land in the Grand Teton National Park.

**Constitutional Authority:** A committee report for S. 273 is not available. However, the committee report for S. 1105 in the 107<sup>th</sup> Congress (House Report 107-639) cited Article I, Section 8 (without citing a specific clause) and Article IV, Section 3 (power to dispose of and make all needed rules and regulations respecting the territory or property belonging to the United States).

**Staff Contact:** Lisa Bos, [lisa.bos@mail.house.gov](mailto:lisa.bos@mail.house.gov), (202) 226-1630

---

## **H.R. 1082—Birch Bayh Federal Building and United States Courthouse Designation Act (*Carson of Indiana*)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, June 3<sup>rd</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 1082 would designate the federal building and U.S. courthouse located at 46 East Ohio Street in Indianapolis, Indiana, as the “Birch Bayh Federal Building and United States Courthouse.”

**NOTE:** Identical legislation (S. 763), sponsored by Senator Richard Lugar (R-IN), passed the Senate on April 11, 2003, by unanimous consent.

**Additional Background:** Birch Bayh, Democrat, is a former Indiana state representative (serving as minority leader in 1957 and 1961 and as speaker in 1959), former U.S. senator (from 1963 to 1981), and father of current Indiana senator Evan Bayh.  
<http://bioguide.congress.gov/scripts/biodisplay.pl?index=B000254>

**Committee Action:** On May 21, 2003, the Transportation & Infrastructure Committee marked up the bill and reported it favorably by voice vote.

**Cost to Taxpayers:** The only costs associated with a federal building renaming are those for sign and map changes, none of which significantly affect the federal budget.

**Does the Bill Create New Federal Programs or Rules?:** No.

**RSC Staff Contact:** Paul Teller, [paul.teller@mail.house.gov](mailto:paul.teller@mail.house.gov), (202) 226-9718

---

## **H.J.Res. 4—Proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States (Cunningham)**

**Order of Business:** The constitutional amendment is scheduled to be considered on Tuesday, June 3<sup>rd</sup>, under a modified closed rule making in order one amendment in the nature of a substitute to be offered by Rep. Conyers or his designee.

**Summary:** H.J.Res. 4 would propose an amendment to the U.S. Constitution to allow Congress to enact legislation that would prohibit the physical desecration of the American flag. H.J.Res. 4 would have to pass both the House and the Senate by a two-thirds margin.

The legislatures (or conventions) of three-fourths of the States would have to ratify the proposed amendment within seven years for the amendment to become effective.

NOTE: Ratification of this constitutional amendment would **NOT** prohibit flag desecration; it would only give Congress the legislative authority to prohibit flag desecration, should it so desire. Actual prohibition of flag desecration would therefore have to be passed subsequently under regular legislative order.

The text of H.J.Res. 4 is as follows:

#### SECTION 1. CONSTITUTIONAL AMENDMENT.

The following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

`Article--

`The Congress shall have power to prohibit the physical desecration of the flag of the United States.'

#### **Recent Vote History:**

The flag-desecration constitutional amendment passed the House on:

- June 28, 1995, by a vote of 312-210:  
<http://clerkhouse.house.gov/votes/votes2.asp?year=1995&roll=431>
- June 12, 1997, by a vote of 310-114:  
<http://clerkhouse.house.gov/votes/votes2.asp?year=1997&roll=202>
- June 24, 1999, by a vote of 305-124:  
<http://clerkhouse.house.gov/votes/votes2.asp?year=1999&roll=252>
- July 17, 2001, by a vote of 298-125:  
<http://clerkhouse.house.gov/votes/votes2.asp?year=2001&roll=232>

In recent years, the Senate has either not considered a flag-desecration amendment or one has failed to get the required two-thirds vote on the Senate floor.

#### **Additional Background:**

In 1984, a Texas man was arrested for burning a stolen American flag outside the Republican National Convention in Dallas. He was convicted of violating a Texas law against flag desecration. His conviction was appealed to the Supreme Court, and in 1989 the Court in a 5-4 decision (*Texas v. Johnson*) struck down 48 state laws that made criminal the public burning of the flag.

In September 1989, in response to the Supreme Court decision, Congress passed the Flag Protection Act of 1989 by a vote of a 380 to 38. In June of 1990, in another 5-4 decision (*U.S. v. Eichman*) the Supreme Court struck down this new law stating that burning an American flag as part of a political demonstration was expressive conduct protected by the First Amendment to the U.S. Constitution, and neither the states, nor the federal government could prohibit the desecration of the American flag. The Supreme Court said in the *Eichman* opinion that the only way the flag could be protected would be by the creation of a narrow “juridical category,” wherein the flag was specifically recognized above all other symbols and, therefore, could be accorded special protection.

Since 1989, there have been over 100 reports of incidents involving flag desecration nationwide. To see a list of such incidents, visit this website:

<http://www.cfa-inc.org/issues/burnings.htm>

**Since the 1990 Supreme Court ruling, 49 states have passed resolutions calling on Congress to pass the amendment and send it back to the states for ratification.** (Vermont is the only state not to pass such a resolution.)

On June 14, 1777 (twelve years before the ratification of the U.S. Constitution), the Continental Congress resolved: "That the flag of the United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field, representing a new constellation."

For more information on the American flag, visit this website:

<http://www.cfa-inc.org/about/organization.htm>

**Amendment Made in Order under the Rule:**

It is expected that Rep. Conyers (D-MI) or Rep. Watt (D-NC) will offer an amendment that states that: "Not inconsistent with the first article of amendment to this Constitution, the Congress shall have the power to prohibit the physical desecration of the flag of the United States." [*emphasis added*]

**Committee Action:** The constitutional amendment was introduced on January 7, 2003, and referred to the Judiciary Committee. On May 7<sup>th</sup>, the Constitution Subcommittee marked up the amendment and forwarded it to the full Committee by voice vote. On May 21<sup>st</sup>, the full Committee marked up the amendment and reported it favorably by a vote of 18-13.

**Administration Position:** Although no Statement of Administration Policy (SAP) is available for H.J.Res. 4, for the identical constitutional amendment two years ago, the Bush Administration submitted the following SAP to Congress:

“The Administration supports H.J.Res. 36, which would propose to amend the United States Constitution to authorize the Congress to prohibit the physical desecration of the flag of the United States.”

<http://www.whitehouse.gov/omb/legislative/sap/107-1/HJR36-h.html>

**Cost to Taxpayers:** CBO reports that H.J.Res. 4 itself would have no impact on the federal budget. If the proposed constitutional amendment were approved by the states, then any future legislation prohibiting flag desecration could impose additional costs on U.S. law enforcement agencies and the court system, to the extent that cases involving desecration of the flag are pursued and prosecuted. However, CBO does not expect any resulting costs to be significant.

**Does the Bill Create New Federal Programs or Rules?:** The joint resolution proposes an amendment to the United States Constitution. Twenty-seven constitutional amendments have been ratified since the Founding. The most recent ratification was in 1992.

**Constitutional Authority:** The Judiciary Committee cited constitutional authority for the amendment under Article V, which grants Congress the authority to propose amendments to the Constitution.

**RSC Staff Contact:** Paul Teller, [paul.teller@mail.house.gov](mailto:paul.teller@mail.house.gov), (202) 226-9718